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**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE &
J.M.F.C., AT:MAGADI**

Present:

**Sri. Hanumanth Satwik., LL.M,
Addl. Senior Civil Judge & JMFC., Magadi**

DATED: THIS THE 10th DAY OF JUNE, 2022

O.S.No.320/2020

Plaintiff : Sri. H. Anjanappa,
S/o. Late. Hanumanthappa,
Aged about 73 years,
R/at: #7, 1st Floor, 1st Main,
'D' Cross, Maruthinagara,
Yelahanka, Bangalore – 560 064.

(By Sri. **K.Y.** Advocate)

---V/s---

Defendants : 1. Sri. N. H. Raju,
S/o. Late. Hanumanthappa,
Aged about 48 years,
R/at: Nethenahalli Village,
Kasaba Hobli, Magadi Taluk,
Ramangara District.

2. Sri. Hanumanthappa,
S/o. Late. Hanumanthappa,
Aged about 68 years,

R/at: No.12/116, Near Ramarao
Layout, Kattriguppe,
Banashankari III Stage,
Bangalore South,

3. Smt. Kempamma,
D/o. Late. Hanumanthappa,
W/o. Late. K. N. Murthy,
Since dead by her L.Rs.,

(a) Sri. Ramesh,
S/o. Late. K. N. Murthy,
Aged about 58 years,

(b) Sri. Prakash,
S/o. Late. K. N. Murthy,
Aged about 53 years,

(c) Sri. Suresh,
S/o. Late. K. N. Murthy,
Aged about 51 years,

(d) Smt. Lakshmi Devi,
D/o. Late. K. N. Murthy,
Aged about 55 years,

(e) Smt. Bhagya,
D/o. Late. K. N. Murthy,
Aged about 49 years,
R/at: Bangalore.

D4(a to e) R/at:
Koramangala Village,
Lakkenahalli Post, Soluru Hobli,
Magadi Taluk, Ramanagara District.

(f) Smt. K. N. Shobha,
W/o. N. H. Raju,

Aged about 45 years,
R/at: Nethenahalli Village,
Kasaba Hobli, Magadi Taluk,
Ramangara District.

4. Smt. Sugunamma,
W/o. Kaverappa,
Aged about 58 years,
R/at: #1405, Aprameyanilay,
8th Main Road, 5th Cross, 5th Stage,
1st Phase, BEML Layout,
Raja Rajeshwarinagar,
Bangalore 560 098.

(D1, 3(f) & 4 by **Sri. H.N.S.** Advocate)
(D2, 3(b to e) by **Sri. A.K.H.** Advocate)

ORDER ON IA NO.I

The present suit is for partition, separate possession, declaration, permanent injunction and for mesne profits.

2. The present application has been filed by the plaintiff U/O. XXXIX Rule 1 and 2 R/w Sec.151 of CPC praying to temporarily restrain the defendants from alienating the suit schedule properties. It is the case of the plaintiff that his father Hanumanthappa is the propositus of his family. The said Hanumanthappa has two wives by name Narasamma and Ammayamma. He and defendant no.1 to 4 constituted joint Hindu family. He, defendant no.2 and 3 born to

Hanumanthappa through Narasamma. Defendant no.1 and 4 are the children of Hanumanthappa through Ammayamma. The suit schedule properties are the ancestral properties of Hanumanthappa. Hanumanthappa died on 22.05.1995. After the death of Hanumanthappa, his family members partitioned the ancestral properties. In the partition, the suit schedule properties devolved on deceased Hanumanthappa. As Hanumanthappa died before partition, the suit schedule properties were mutated in the name of Ammayamma. Some of the properties were sold during the life time of Hanumanthappa. Defendant no.2 expressed his desire to separate. As such, written Memorandum of Understanding came into existence. As per the said MOU, defendant no.2 received sale consideration for the property bearing Sy.No.51 and waived his interest over unpartitioned properties. He, defendant no.1 and 2 affixed their signatures to the said MOU. Therefore, defendant no.2 has no share in the suit schedule properties. He has been made as a formal party. Defendant no.1 and his mother sold portion of item no.6 of the suit schedule property. Further, on 26.07.1999 land

bearing Sy.No.96/1, measuring 16 guntas was sold by one R. Madanmohan S/o. A. Ramachandraiah, the brother of deceased Hanumanthappa. Defendant no.1 is the attesting witness to the said deed. He was a government servant. He financially assisted his father, during the life time of his father and even after his death. Defendant no.1 and his mother maliciously sold portion of item no.6 of the suit schedule property. Defendant no.1 and his deceased mother created gift deed in favour of defendant no.1, 2 and 3(f). The mother of defendant no.1 gifted item no.1 to 4 of the suit schedule properties in the name of defendant no.1. Defendant no.1 in turn gifted item no.2 of the suit schedule property in favour of defendant no.2 vide gift deed dated: 29.02.2020. The mother of defendant no.1 gifted item no.5 of the suit schedule property in favour of defendant no.3(f) vide gift deed dated: 13.02.2017. He has share in the suit schedule properties. In these circumstances, it is necessary to restrain the defendants from alienating the suit schedule properties. In this regard, the plaintiff prays as above.

3. Defendant no.1, 3(f) and 4 filed memo adopting their written

statement as objections to the application. The defendants in their written statement denied the plaint averments. The defendants contended that Hanumanthappa got ancestral properties at Nethenahalli. Item no.1 to 4, 6 of the suit schedule properties, land bearing Sy.No.43 of Nethenahalli Village, item no.5 of the suit schedule property and Sy.No.11 of Shettihalli Village were allotted to the share of Hanumanthappa. They are the ancestral properties of Hanumanthappa. The said Hanumanthappa during his life time orally divided his ancestral properties among plaintiff, defendant no.1, 2 and his second wife. In the partition item no.7 of the suit schedule property and land bearing Sy.No.43 were allotted to the plaintiff. Further, land bearing Sy.No.51 measuring 3 acres 27 guntas including 2 guntas of kharab land was jointly allotted to the share of plaintiff and defendant no.2. Furthermore, item no.1 to 6 of the suit schedule properties were allotted to the share of defendant no.1 and to the share of second wife of Hanumanthappa. The father of Hanumanthappa by name Kempegowda and father of one A. Ramachandraiah by name Anjinappa are brothers. They are the

sons of Mudduhanumaiah. Anjanappa was the manager of the family. After the death of Muddahanumaiah, the revenue records of the ancestral and joint family properties were mutated in the name of Anjinappa. During the life time of Muddahanumaiah, their sons orally partitioned the properties. However, the revenue records were not mutated as per oral division. Therefore, item no.1 to 6 of the suit schedule properties though allotted to the share of defendant no.1, they are standing in the name of A. Ramachandraiah. For facilitating mutation of revenue records, the sons of Muddahanumaiah entered into *Panchayathi Vibhaga Patra* dated: 10.05.1996, in pursuance to the earlier oral partition. In the said partition, Ammayamma acquired 'B' schedule property. Plaintiff and defendant no.2 are the signatories to the said *Panchayathi Vibhaga Patra*. As plaintiff and defendant no.2 took their share in the properties of Hanumanthappa, they did not get any separate share in the *Vibhaga Patra*. Accordingly, the mutations were effected as per *Panchayathi Vibhaga Patra*. Thereafter, Ammayamma gifted item no.1 to 4 of the suit schedule properties in favour of defendant

no.1 through gift deed dated: 11.09.2018. Ammayamma gifted item no.5 of the suit schedule property in favour of defendant no.3(f). Further, with an intention to purchase agricultural properties, defendant no.2 got executed gift deed with respect to item no.2 of the suit schedule property from defendant no.1. The plaintiff and his family members and defendant no.2 sold land bearing Sy.No.51, measuring 3 acres 27 guntas in favour of L. Sundresh and M. C. Mahesh on 11.10.2005. The plaintiff suppressed material facts. The discription of the suit schedule properties is not correct. In this regard, defendant no.1, 3(f) and 4 prayed to reject the application.

4. Defendant no.2, 3(a) and 3(e) filed memo adopting their written statement as objections to the application. The defendants in their written statement denied the plaint averments. The defendants admitted that the plaintiff, defendant no.2 and 3 are the children of Hanumanthappa through his first wife and defendant no.1 and 4 are born to Hanumanthappa

through his second wife. Defendant no.3(a to f) are the legal heirs of defendant no.3 – Kempamma. The defendants contended that Muddahanumaiah is the propositus of their family. Thimmakka is the wife of Muddahanumaiah. Byregowda, Kempegowda, Anjinappa, Thammannagowda, Doddaputtegowda and Chikkaputtegowda are the children of Muddahanumaiah and Thimmakka. Anjinappa was looking after the family affairs even after the death of his father. Anjinappa and his brothers partitioned the joint family properties through oral division. The revenue documents of the joint family properties were in the name of Anjinappa. After his death, some of the documents were mutated as per oral partition and some of the revenue documents of the properties are still standing in the name of A. Ramachandraiah the son of Anjinappa. The father of plaintiff, defendant no.1 and 2 by name Hanumanthappa has two wives by name Narasamma and Ammayamma. The said Hanumanthappa orally partitioned his ancestral and joint family properties among his sons. As per the oral partition plaintiff, defendant no.2 and Kempamma were allotted land bearing

Sy.No.51, measuring 3 acres 25 guntas and item no.7 of the suit schedule property. Subsequently, the land bearing Sy.No.51, measuring 3 acres 25 guntas was mutated in the name of wife of plaintiff by name Susheelamma and defendant no.2. Further, on 11.10.2005 the wife of plaintiff and defendant no.2 sold the said property in favour of T. L. Sundresh and M. C. Mahesh. The plaintiff suppressed this fact and filed false suit. The present suit is bad for non-joinder of necessary parties and non-inclusion of all the properties. In the oral division item no.1 to 6 of the suit schedule properties were allotted to the share of defendant no.1 and Ammayamma. For developing the properties and to obtain loan Ammayamma gifted item no.1 to 4 of the suit schedule properties in favour of defendant no.1 vide gift deed dated: 11.09.2018. Further, to purchase agricultural property and to get benefit of income tax fees and since there was no agricultural land in the name of defendant no.1, defendant no.2 obtained gift deed from defendant no.1 with respect to item no.2 of the suit schedule property. Accordingly, the khata of item no.2 of the suit schedule property was mutated in the name of defendant

no.2. Ammayamma purchased land bearing Sy.No.84/1, measuring 1.12 guntas vide sale deed dated: 18.08.2006. Further, Ammayamma gifted, item no.5 of the suit schedule property and the property purchased by her, in favour of defendant no.3(f) through gift deed dated: 13.12.2017. The present suit is filed to illegally acquire the suit schedule properties. In this regard, defendant no.2, 3(a to e) pray to reject the application.

5. Heard arguments of the counsel for the plaintiff and defendants.

6. Considering the contentions of the parties, following points arise for my consideration.

1. Whether plaintiff has made out prima-facie case for grant of temporary injunction?
2. Whether balance of convenience is in favour of the plaintiff?
3. Whether plaintiff will suffer irreparable injury if temporary injunction is not granted?
4. What order?

7. My findings for the above points are as follows.

- Point No.1 : In the affirmative
Point No.2 : In the affirmative
Point No.3 : In the affirmative
Point No.4 : As per final order
For the following;

REASONS

8. **Point No.1**:- It is the case of the plaintiff that his father Hanumanthappa is the propositus of his family. The said Hanumanthappa has two wives by name Narasamma and Ammayamma. He and defendant no.1 to 4 constituted joint Hindu family. He, defendant no.2 and 3 born to Hanumanthappa through Narasamma. Defendant no.1 and 4 are the children of Hanumanthappa through Ammayamma. The suit schedule properties are the ancestral properties of Hanumanthappa. Hanumanthappa died on 22.05.1995. After the death of Hanumanthappa, his family members partitioned the ancestral properties. In the partition, the suit schedule

properties devolved on deceased Hanumanthappa.

9. Having said this, I have perused the written statement. It is the case of defendant no.1, 3(f) and 4 that Hanumanthappa partitioned the ancestral properties between the sons of his first and second wife. In the said partition item no.7 of the suit schedule property and property bearing Sy.No.51, measuring 3 acres 27 guntas including karab land of 2 guntas was jointly allotted to plaintiff and defendant no.2. Item no.7 of the suit schedule property and land bearing Sy.no.43 was allotted to the share of plaintiff. Further, item no.1 to 6 of the suit schedule properties were allotted to the share of defendant no.1 and his mother.

10. Further, defendant no.2, 3(a to e) in their written statement contended that Hanumanthappa orally partitioned the ancestral properties. In the said partition the plaintiff and defendant no.3 were allotted item no.7 of the suit schedule property and land bearing Sy.No.51, measuring 3 acres 25 guntas. Further, item

no.1 to 6 of the suit schedule properties were allotted to the share of defendant no.1 and his mother – Ammayamma.

11. Thus, having regard to the contentions of the defendants, it is prima-facie clear that the suit schedule properties were joint and ancestral properties of plaintiff and defendants at an undisputed point of time.

12. Be it stated, the defendants contended that there is prior partition. The present suit is bad for non-joinder of necessary parties. In this regard, the defendants also produced documents in support of their case. Be it noted, for the above said reasons it is prima-facie clear that the suit schedule properties were the joint and ancestral properties of plaintiff and defendants at an undisputed point of time. This being the case, I am of the view that the contentions raised by the defendants are the subject matter of trial, which cannot be decided at this stage of the case. In this view of the matter, I am of the view that the documents produced by the defendants are also the subject matter of trial,

the legality of which can be determined only at trial. In these circumstances, I am of the view that the documents produced by the defendants are of no avail to them at this stage of the case.

13. Be it stated, the present suit is one for declaration, permanent injunction, partition and separate possession and for mesne profits. Further, for the above said reasons it is prima-facie clear that the suit schedule properties were the joint and ancestral properties of plaintiff and defendants at an undisputed point of time. In these circumstances, having regard to the issues that are required to be answered in the present suit, I am of the view that there is a prima-facie case for trial. In this view of the matter, considering the application, pleadings and materials on record, I am of the view that the plaintiff has made out prima-facie case. Accordingly, point no.1 is answered in the affirmative.

14. **Point No.2:** - In the case on hand from the pleadings and the documents produced, it is prima-facie clear that there is a prima-facie case for trial. In these circumstances, if temporary injunction is not granted and if defendants alienate the suit

schedule properties as alleged, the plaintiff will suffer inconvenience, as the plaintiff will be put into multiplicity of litigation. Such being the case, if temporary injunction is not granted, the inconvenience which will be suffered by the plaintiff is more than the inconvenience which may be caused to defendants. Further, during the pendency of the suit, if defendants alienate the suit schedule properties as alleged by the plaintiff, the very purpose of the suit will be frustrated. Since defendants have an opportunity to contest the matter and get the matter decided on merits, I am of the view that balance of convenience with respect to suit schedule properties is in favour of the plaintiff. Resultantly, point no.2 is answered in the affirmative.

15. **Point No.3**:- In the case on hand from the pleadings and the documents produced, it is prima-facie clear that there is a prima-facie case for trial with respect to suit schedule properties. In these circumstances, if temporary injunction is not granted and if defendants alienate suit schedule properties as alleged, the plaintiff will suffer irreparable injury and such injury cannot be

compensated in terms of money, as the plaintiff will be put into multiplicity of litigation. Further, during the pendency of the suit if defendants alienate suit schedule properties as alleged by the plaintiff, the very purpose of the suit will be frustrated. In these circumstances, the plaintiff showed that she will suffer irreparable injury, if temporary injunction is not granted with respect to suit schedule properties. Resultantly, point no.3 is answered in the affirmative.

16. **Point No.4** : - In view of reasons on point No.1 to 3 and in the interest of justice and equity, I proceed to pass the following,

ORDER

**IA No.I U/o.XXXIX Rule 1 & 2 r/w
Sec.151 of CPC filed by the plaintiff is hereby
allowed.**

**Defendants, their agents or anybody
claiming through them are hereby temporarily
restrained from alienating suit schedule
properties till the disposal of the suit.**

Parties to bear their own cost.

(Dictated to the Typist directly on the computer, typed by her corrected by me and then pronounced in the open court on this

the 10th day of June, 2022.)

(Hanumanth Satwik)
Addl. Senior Civil Judge & JMFC.,
Magadi.